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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/240,895	05/11/94	COMISKEY	S 17234

NIXON & VANDERHYE  
1100 NORTH GLEBE RD., 8TH FLOOR  
ARLINGTON VA 22201-4714

IM71/0316

EXAMINER

YAMNITZKY, M

ART UNIT PAPER NUMBER

1774

DATE MAILED:

03/16/99

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS**NOTICE OF ALLOWABILITY**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course.

- ☒ This communication is responsive to Applicants' Amendment filed 12/18/98 and Telephonic Interview
- ☒ The allowed claim(s) ~~is~~ are 1, 4, 9, 11-13, 21, 7, 8, 26, 24, 25, 22, 27, 28, 23, 29 on 03/09/99.
- ☐ The drawings filed on \_\_\_\_\_ are acceptable. and so Crenumbered as 1-18, respectively.

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

A SHORTENED STATUTORY PERIOD FOR RESPONSE to comply with the requirements noted below is set to EXPIRE **THREE MONTHS** FROM THE "DATE MAILED" of this Office action. Failure to timely comply will result in ABANDONMENT of this application. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

- ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION, PTO-152, which discloses that the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.

- ☒ Applicant MUST submit NEW FORMAL DRAWINGS

☐ because the originally filed drawings were declared by applicant to be informal.

☒ including changes required by the Notice of Draftperson's Patent Drawing Review, PTO-948, attached hereto or to Paper No. 5

☐ including changes required by the proposed drawing correction filed on \_\_\_\_\_, which has been approved by the examiner.

☐ including changes required by the attached Examiner's Amendment/Comment.

Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the reverse side of the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftperson.

- ☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Any response to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE/SERIAL NUMBER). If applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

**Attachment(s)**

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Notice of Draftperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

☒ Interview Summary, PTO-413 (Paper No. 32)

☒ Examiner's Amendment/Comment

☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

☐ Examiner's Statement of Reasons for Allowance

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1, 4, 7-9, 11-13 and 21-30, drawn to a method of reducing reflected light glare into a human's eyes, classified in class 427, subclass 256.
  - II. Claims 20 and 31, drawn to an eye black shape, classified in class 428, subclass 195.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and of Group II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)).

In the instant case, the product as claimed can be made by a materially different process such as free hand drawing of a predetermined shape using eye black.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and because the search required for the different Groups is not co-extensive, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Mr. Robert Vanderhye on 03/09/99, a provisional election was made without traverse to prosecute the invention of Group I, claims 1, 4, 7-9, 11-13 and 21-30. Claims 20 and 31 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Robert Vanderhye on 03/09/99.

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The claims have been amended as follows:

Claims 20 and 31 have been cancelled without prejudice or disclaimer.

Claim 1, line 16: "eye" has been changed to --eyes--.

Claim 8, line 3: the comma has been deleted.

Claim 9, line 5: "overseas" has been changed to --oversees--.

Claim 22, lines 10-11: "having a non-reflective colored and finished exterior" has been deleted.

Claim 23, lines 10-11: "having a non-reflective colored and finished exterior" has been deleted.

Claim 24, line 5: "overseas" has been changed to --oversees--.

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6. Applicant is reminded that upon the cancellation of claims to a non-elected invention (in the present case, the cancellation of claims 20 and 31), the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

7. Any inquiry concerning this communication should be directed to Marie R. Yamnitzky at telephone number (703) 308-4413. The examiner can generally be reached at this number from 6:45 a.m. to 3:15 p.m. Monday-Friday.

The current fax numbers for Art Unit 1774 are (703) 305-3599 for official after final faxes and (703) 305-5408 for all other official faxes. (Unofficial faxes for Art Unit 1774 can be sent to (703) 305-5436.)

MRY  
03/09/99

*Marie R. Yamnitzky*

MARIE YAMNITZKY  
PRIMARY EXAMINER

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